IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 9209 of 2007(U)

PETITIONER:

N.K.VIJAYAKUMAR, CHAITHRAM,
CHETTUMKUZHI, P.O.HIDAYATH NAGAR,
KASARAGOD DISTRICT.

BY ADV. SRI.V.P.SUKUMAR

RESPONDENTS:

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1. THE COMMERCIAL TAX OFFICER,
OFFICE OF THE ASSISTANT COMMISSIONER (KVAT),
SPECIAL CIRCLE, KASARGOD DIST.

2. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIATE,
THIRUVANANTHAPURAM.

3. VARGHESE, S/O.MATHAI, PROPRIETOR,
V.M.TRADERS, DOOR NO.W18/359, ROSE GARDENS,
SCHOOL BUILDING, P.O.MUTTATHODY, VIDYA NAGAR,
KASARAGOD DISTRICT.

BY GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.9209 of 2007-U

Dated this the 19th day of March, 2007

JUDGMENT

The petitioner challenges Exts.P8 to P10 protective assessment orders passed under Section 19 (c) of the K.G.S.T. Act. He submits, the order has been passed without jurisdiction. Even assuming that all the allegations in it are admitted, still a protective assessment is unwarranted, it is submitted. Therefore, he directly challenges the protective orders before this Court. But, against those orders, the petitioner has a right of appeal, before the Deputy Commissioner and further appeal before a Judicial Tribunal. Still the petitioner can approach the Division Bench of this Court by filing a revision petition. In view of the hierarchy of remedies available, it is unnecessary for this Court to entertain the dispute, unless it fall within the realm of finding of fact. I think it is appropriate for the petitioner to settle the dispute, invoking the statutory remedies available to him. The learned counsel for the petitioner submitted that the petitioner will have to pay half the court fee, to challenge the impugned orders which may come about Rs.1.5 lakhs. I think the same cannot be accepted as a ground to approach this court under Article 226 of the Constitution of India. If that be so, every assessee can bye-pass the statutory remedies and approach this court by contending that he is not able to pay the prescribed fee.

In the result, the Writ Petition fails and it is dismissed without

prejudice to the contentions of the petitioner and his right to invoke the statutory remedy available to him under the K.G.S.T. Act.I

K.BALAKRISHNAN NAIR, JUDGE.

MS